

Development Management Department  
Plymouth City Council  
Ballard House  
West Hoe Road  
Plymouth

8th September 2021

### **Supporting Statement Covering Letter**

Dear Sirs

**Establish use of property as 6 bed House in Multiple Occupation at 35 Pentyre Terrace, Plymouth, PL4 8RR.**

This application is submitted via the Planning Portal. The application fee of £462.00 will be covered by bank transfer and the applicant will contact you shortly to make payment.

#### ***Site Description***

The site is located within the St Judes area of Plymouth. The property is a large end of terrace residence currently in use as an 6 bed HMO.

The property is located on the south side of Pentyre Terrace, close to the junction with Sea View Terrace. The building's front elevation faces onto Pentyre Terrace and presents a two storey gabled elevation with main entrance and ground and first floor windows. The property has a traditional pitched roof with dormer window facing onto Sea View Terrace and in terms of character and appearance is typical of many terraced Victorian properties, presenting an attractive facade to the street, including a bay window feature onto Sea View Terrace. Due to the sloping topography, the site levels fall from the rear of the site.

The property benefits from having a rear access lane and contains cycle storage and some outdoor amenity space. The surrounding area is mixed in character and contains further residential development in the immediate vicinity with both the City Centre (west) and Mutley Plain (north) shopping centres within walking distance of the site. These provide a full range of amenities and includes convenience shopping in the form of small supermarket outlets, a mix of

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pubs, bars and cafes and other large retail premises . The area is well served by public transport with many of the city's bus routes passing through St Judes. Overall, it is a very sustainable location. In terms of character, the immediate surrounding townscape is of good quality and characterised by period development, much of which comprises of terraced dwellings that have previously been converted to flats from large single residences.

### ***Proposal***

The proposal is for a Lawful Development Certificate, to confirm the lawful use of the property as a 6 bed House in Multiple Occupation (C4 use).

### ***Planning History***

There is no recent planning history at the site. Previous applications listed below:

- 01/00109/FUL; Change of use and conversion of residential property into 5 bedsits to accommodate up to ten persons who may be asylum seekers. Refused 3.5.2001
- 89/03600/FUL; Change of use of dwelling house to childrens day nursery on ground floor with residential accommodation on upper floors. Granted Conditionally 16.2.1990

### ***Main Issues***

Section 191 of the Town and Country Planning Act (1990) as amended by the Planning and Compensation Act 1991) allows for CLEUD applications to be made to the local planning authority. Section 191 provides for local planning authorities to determine whether 'on the balance of probability' the evidence submitted proves that the existing use or development is lawful. Therefore, normal planning considerations and planning policy are not relevant to the determination of this CLEUD application.

The onus of proving the lawfulness of an existing use or development rests with the applicant. The courts have held in *Gabbittas v Secretary of State for the Environment* [1985] JPL 630 that the relevant test of the evidence of such matters is 'the balance of probability'. Further to this the courts have held that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. If the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of

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events less than probable, there is no good reason to refuse the certificate application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance' of probability.

The property (35 Pentyre Terrace) has been used continuously for a period in excess of 10 years as a 6 bed House in multiple occupation (since 2011). To support this application, the following details are submitted:

- Appendix A; Email dated 7.9.2021 from Mark Chubb (PCC) to Elliot Cox confirming HMO use between 2011 and 2021.
- Appendix B; HMO Property License dated 1.4.2011
- Appendix C; HMO Property License dated 19.10.2017

The documents listed above demonstrate that the property has been in continuous use for a period in excess of 10 years as a 6 bed HMO (C4 use class). The use of the building is clearly lawful. In any case, it is also relevant to note that the time limit for taking enforcement action against a breach of building control consisting of the change of use of a building is 10 years, as provided by Section 171B(3) of the Town and Country Planning Act 1990 (as amended):

*Section 171B(3): 'In the case of any breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach'.*

### **Conclusion**

It is concluded that on the balance of probabilities, the use of the building as a HMO is lawful and a Certificate should therefore be issued.

If you have any queries, please do not hesitate to contact me.

Yours faithfully

**Rob Heard BA (Hons) MRTPI**  
Chartered Town Planner  
**RH Town Planning Ltd**

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